

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2007 FEB 21 P 1:56

CLERK *B. McArthur*
SO. DIST. OF GA.

ULYSSES MCMILLAN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 305-134
(Formerly CR 304-021)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. In lieu of objections, the government filed a response to the Report and Recommendation (doc. no. 15), stating that it agreed with the Magistrate Judge's recommendation and would agree to have this Court enter a new Judgment and Commitment Order ("J & C"), without holding a new sentencing hearing, that would be identical in all respects to the previously entered J & C (CR 304-021, doc. no. 15), save only for the date of entry. See United States v. Parrish, 427 F.3d 1345, 1347-48 (11th Cir. 2005) (*per curiam*) (finding district court not required to hold a resentencing hearing in similar circumstances).

Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Petitioner's 28 U.S.C. § 2255 motion to vacate is **GRANTED**. Petitioner's judgment in the underlying criminal case is **VACATED**. (CR 304-021, doc. no. 15). Simultaneous with the entry of this Order, the Court is entering a new J & C that reimposes the same sentence, identical in all respects to the original J & C (CR

304-021, doc. no. 15), save only for the date of entry. Petitioner is **HEREBY ADVISED** that with the entry of the new J & C, he shall have all the rights associated with an appeal from any criminal sentence. The Court also specifically advises Petitioner that the entry of the new J & C creates a ten-day period within which Petitioner may prosecute a direct appeal of his criminal conviction. Thus, Petitioner shall have **ten (10) days** from the date of entry of the J & C to file a notice of appeal.

Finally, the Clerk of Court is **DIRECTED** to **CLOSE** this civil action and **ENTER** a final judgment in this civil case in favor of Petitioner. This Order and the new J & C shall be served on counsel of record by facsimile and by United States mail.¹

SO ORDERED this 21st day of February, 2007, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE

¹ The Court notes that Attorney Laurel P. Landon has been appointed, under the Criminal Justice Act, to represent Petitioner on direct appeal. (CR 304-021, doc. no. 32).